UNITED
NATIONS

AT

Administrative Tribunal

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22 November 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 740

Case No. 516: PAPPAS

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 6 January 1994, Anna Mamalakis Pappas, a former staff member of the United Nations Institute for Training and Research, hereinafter referred to as UNITAR, filed an application in which she requested, under article 12 of the Statute of the Tribunal, the revision and correction of Judgement No. 500, rendered by the Tribunal on 9 November 1990 and Judgement No. 585, rendered by the Tribunal on 20 November 1992;

Whereas the Applicant's pleas read, in part, as follows:

> "As was the case with Judgement No. 500, the recitation of the pleas in Judgement No. 584 is woefullly **incomplete. Only the introductory paragraph of the pleas is recited and there is no mention of the specific requests that followed it.** ...
>
> ...
>
> ... Applicant requests revision of Judgement No. 500 [...] (and corresponding revision of Judgement No. 585 [...] as applicable) to rectify errors, contradictions and lacunae therein ... listed [by the Applicant] in the order of appearance ..."

Whereas the Respondent filed his answer on 20 April 1994;

Whereas, on 25 October 1995, the Applicant filed written observations containing a set of amended pleas;

Whereas, on 2 and 4 November 1995, the Applicant submitted additional statements;

Whereas, on 9 November 1995, the Applicant submitted corrections of errata in her application which were accepted on 22 November 1995;

Whereas the Applicant's principal contention is:

The Tribunal's judgements contain errors, contradictions and lacunae, and the Tribunal's findings of law were based on wrong facts and factual premises.

Whereas the Respondent's principal contention is:

The application for revision is not receivable as it is an improper attempt to reargue matters finally adjudicated upon by the Tribunal in its previous judgements concerning the Applicant.

The Tribunal, having deliberated from 24 October to 22 November 1995, now pronounces the following judgement:

I. The Applicant requests revision of Judgements No. 500 and No. 585, rendered by the Tribunal on 9 November 1990 and 20 November 1992 respectively. In the latter Judgement, the Tribunal has already denied revision of the earlier one.

The revision of judgements is governed by article 12 of the Tribunal's Statute. It reads as follows:

> "The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown

> to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

The Tribunal notes at the outset that the Applicant's request for the revision of Judgement No. 500 clearly falls outside the provisions of article 12 and, therefore, cannot be entertained at this stage. The revision of Judgement No. 500 was already sought and rejected. A further application for revision of the Judgement, over a year after it was rendered, is barred not only by the language of article 12 but also by the doctrine of res judicata.

II. The Tribunal therefore will only consider the request for revision of Judgement No. 585, in order to determine whether "some fact of such a nature as to be a decisive factor" has become known to the Applicant after Judgement No. 585 was rendered. It will also turn its attention to whether "clerical or arithmetical mistakes ... or errors arising ... from any accidental slip or omission" appear in that Judgement.

In her submission to the Tribunal, the Applicant claims that Judgement No. 585 is "based on, contains and compounds very serious clerical and arithmetical errors and errors of omission and misstatement of fact".

The Applicant never substantiates these claims; all her arguments are aimed against Judgement No. 500, and, therefore, are not to be considered, for the reasons mentioned above.

In this respect, the Tribunal agrees with the Respondent, when he observes that "a perusal of the pleas in the instant case,

and those in the 16 November 1991 Application for revision of Judgement No. 500 which led to Judgement No. 585, reveals that they are substantively the same."

III. In her written observations on the Respondent's answer, submitted on 25 October 1995, the Applicant adds a new plea, which was not included in her initial submission. The Applicant claims that Judgement No. 585 should be considered null and void "due to the jurisdictional defects in the composition of the adjudicating body ..." that rendered the Judgement. This alleged jurisdictional defect consisted, according to the Applicant, of the fact that one of the Members of the Tribunal who rendered Judgement No. 585 was, at the same time, a Member of the Permanent Mission of a Member State to the United Nations.

IV. The Tribunal will give due consideration to this claim in order to determine whether these circumstances could constitute "a fact of such a nature as to be a decisive factor ..." that would warrant a revision of Judgement No. 585 under article 12 of the Statute.

In the first place, the Tribunal notes that article 12 establishes a time limit and bars any request for revision after one year of the date of the Judgement. Judgement No. 585 was rendered on 2 November 1992. The submission challenging the composition of the Tribunal was submitted on 25 October 1995. This, in itself, would be sufficient reason for not entertaining the Applicant's claim on this issue. Nevertheless, the Tribunal wishes to comment on the merits of the claim.

V. The Tribunal recalls that its Members are elected by the General Assembly. When the General Assembly elected the Member in question, it was fully aware of his status and nevertheless voted for his appointment.

The Tribunal also notes that the conditions of eligibility of its Members are set forth in its Statute and that candidates meeting these requirements are eligible to serve on the Tribunal. The Tribunal does not consider it advisable for members of delegations to the General Assembly of the United Nations to be elected to the Tribunal. However, it finds that, as this view has not been adopted by the General Assembly, no legal consequence can follow that would taint the legitimacy of the Tribunal or render invalid its judgements.

VI. The Tribunal therefore concludes that the requirements of article 12 of its Statute have not been met and that there are no grounds for the revision of Judgement No. 585.

VII. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

New York, 22 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary